

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4477 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

HANIF NURMOHMAD SINDHI

Versus

DISTRICT MAGISTRATE

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR HL JANI, AGP, for Respondents Nos.1,2, and 4.

MR BT RAO, ADDL STANDING COUNSEL for respondent
No.3.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 17-2-1998 passed by the District Magistrate, Vadodara, under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PBM Act"), has filed this petition under Article 226 of the Constitution

of India challenging the legality and validity of his detention.

Since this petition is required to be allowed on the short ground of delay in considering the representation, it is not necessary for me to narrate the grounds of detention supplied to or the allegations made against the petitioner. Suffice it to say that the order of detention is passed on the ground of alleged irregularity in distribution of wheat to the citizens who are living below poverty line and to the citizens who are living above poverty line in pursuance of the Scheme introduced by the State Government which is known as A.P.L. (Above Poverty Line) and B.P.L. (Below Poverty Line).

Ms. Patel, learned Advocate for the petitioner, has contended that the petitioner made the representation on 9-6-98 to the State Government as well as Central Government. However, the said representation was not expeditiously considered and the respondents have not properly explained the delay in considering the representation which has vitiated the continued detention of the petitioner. As far as respondent No.2-State Government is concerned, no reply affidavit has been filed. However, I have seen the original file and perused the file carrying the representation. On behalf of respondent No.3-Union of India, affidavit in reply has been filed by the Under Secretary in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi. Having seen the original file, it appears that the representation dated 9-6-98 was received by the concerned department of the State Government on 11-6-98. However, 13th and 14th being public holidays, on 15-6-98 the file was placed before the concerned Secretary which was decided on 16-6-98 and the petitioner was communicated the decision on 17-6-98. In this view of the matter, prima facie, it appears that the delay is properly explained by the State Government. However, the State Government was requested to forward the representation to the Central Government. It appears that after the decision was taken in the matter, the State Government sent the representation on 18-6-98 which was received by the Central Government on 23-6-98 and was decided on the same day. Thus, there is an unexplained delay in forwarding the representation dated 9-6-98 from 11-6-98 to 17-6-98. The State Government is required to take prompt action in the matter of forwarding the representations of detenus without waiting for a day. Having not done so, I am of the opinion that the continued detention of the petitioner is vitiated.

In the result, this petition is allowed. The order or detention dated 17-2-98 is quashed and set aside. The detenu Hanif Nurmohmad Sindhi is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute to the aforesaid extent with no order as to costs.

Verified copy.